

REMARKS

Claims 1-15 and 17-23 have been amended. Claims 1-15 and 17-25 are pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 121 Restriction:

In response to the Examiner's restriction requirement under 35 U.S.C. § 121, Applicants elect Invention I **with traverse**. Applicants assert that all pending claims read on this invention. The Examiner appears to be using non-substantive differences in terminology between the independent claims as a basis for restriction. This is clearly improper. However, for clarity, Applicants have amended to claims to employ consistent terminology.

Applicants further traverse the restriction requirement on the grounds that the Examiner has not stated a proper restriction requirement. The Examiner states that each of Inventions I-IV are related to one another as subcombinations disclosed as usable together in a single combination." However, none of Inventions I-IV are *disclosed* as *subcombinations* usable together *in a single combination*. To the contrary, all of the claims recite an electronic purchasing system or method. A proper restriction requirement under M.P.E.P. 806.05(d) requires that the subcombinations "do not overlap in scope". However, while not having identical scope, each of the present independent claims has clear overlap in scope. The Examiner appears to have misunderstood the concept of subcombinations usable together in a single combination. For a proper restriction, subcombinations are separate and distinct non-overlapping components of a larger system (the combination). For example, a seat bracket and a gear mechanism are subcombinations of a bicycle (the combination). A seat bracket and a gear mechanism are separate and distinct components that do not overlap in scope (i.e., are mutually exclusive). The independent claims of the present application are clearly not directed to separate non-overlapping subcombinations. To the contrary, they all recite variations of a

electronic purchasing system or method. While there are differences in scope between the independent claims, the independent claims also clearly overlap in scope and are thus not restrictable subcombinations. *See* M.P.E.P. 806.05(d).

Furthermore, according to M.P.E.P. 806.05(d), to state a proper restriction requirement for subcombinations usable together in a single combination, “[t]he Examiner must show, by way of example, that one of the subcombinations has utility other than in the disclosed combination.” Moreover, M.P.E.P. 806.05(d) also states that “the burden is on the Examiner” to make this showing. The Examiner appears to have misunderstood the requirement for a subcombination to have utility *other than in the disclosed combination*. The Examiner merely points to differences between the claims. However, by definition, subcombinations will always have different utility *with respect to one another* by their very nature of being separate and distinct non-overlapping components of a larger system (combination). The requirement of M.P.E.P. 806.05(d) is that a subcombination have a “utility other than in the disclosed combination.” All the examples given by the Examiner clearly apply to the same overall combination as disclosed in the specification. Therefore, the Examiner has not stated a proper restriction requirement.

Another shortcoming of the Examiner’s restriction requirement is in regard to the requirement of M.P.E.P. § 808 for the Examiner to also show “reasons why there would be a serious burden on the examiner if restriction is not required”. In regard to this requirement, the Examiner states that the inventions have acquired a separate status in the art due to their recognized divergent subject matter. Applicants traverse the Examiner’s statement. M.P.E.P. § 808.02 requires the Examiner to “show a recognition of separate inventive effort by inventors” for each invention asserted to have a separate status in the art. The Examiner has made no such showing. According to M.P.E.P. § 808.02, such a showing may be made by “citing patents which are evidence of such separate status, and also of a separate field of search.” The Examiner has provided no such evidence for each invention. Therefore, the restriction requirement is improper.

CONCLUSION

Applicants respectfully submit that the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-90100/RCK.

Respectfully submitted,

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